

Title	Petition to Establish Record of Death and Declaration in Support of Petition to Establish Record of Death (adopt forms MC-360 and MC-360A).
Summary	Two new forms, a petition and a supporting declaration, would be adopted for use in proceedings to establish a record of death under Health and Safety Code sections 103450–103490.
Source	Probate and Mental Health Advisory Committee
Staff	Douglas C. Miller, 415–865–7535, douglas.miller@jud.ca.gov
Discussion	<p>Health and Safety Code sections 103450–103490 establish an expedited procedure to judicially establish the fact, and the date, time, and place, of a person’s birth, marriage, or death, where the event has not been registered or where a certified copy of the record cannot be obtained.</p> <p>Some superior courts have developed their own forms for this purpose. The proposed Judicial Council forms are modeled after local forms used in the Superior Court, County of Marin. The Marin forms include separate petitions to establish each of the three types of records authorized by the statute, and supporting affidavits for each petition. Other local form petitions are multipurpose, using the same form to establish a record of any of the three events. The Probate and Mental Health Advisory Committee believes that separate forms are preferable to a multipurpose form because they would be easier to understand and use, particularly by self-represented persons.</p> <p>The advisory committee has prepared a petition, proposed form MC-360, and a supporting declaration, proposed form MC-360A, to establish a death record for two reasons. First, the Health and Safety Code provisions create a procedure for the establishment of a death record that is similar to the procedure authorized by Probate Code sections 200–212, under which the fact of a person’s death may be established on the petition of someone claiming an interest in real or personal property, title to or an interest in which would be affected by the person’s death. Second, Health and Safety Code section 103470 provides that any judge of the superior court who regularly hears probate matters may hear a petition to establish any of the three records—of birth, marriage, or death—authorized under the statute. If the court has a probate department, the matter must be heard in that department.</p>

The advisory committee elected not to develop forms for the establishment of the record of a birth or a marriage at this time because there is no probate analogue to Probate Code sections 200–212 for these records. The committee seeks the public’s views on whether statewide forms to establish these other records should be developed.

Item 6 in the supporting declaration, proposed form MC-360A, is significant because it would require the declarant to disclose whether the death record is important to pending litigation. If it is, the declarant must identify and describe the litigation and disclose the names of the parties and their attorneys. The court would then be able to order additional notice under Probate Code section 1202 or, if necessary, under its inherent powers to protect the interests of any other person involved in the litigation or to prevent a fraud on the court.

The advisory committee believes that item 6 is appropriate because the Health and Safety Code sections do not contain clear requirements for notice to interested persons, particularly as compared to the detailed, specific, and well-understood notice requirements applicable to probate proceedings.

Another important feature of the supporting declaration, form MC-360A, is item 5, in which the declarant must identify official and other documents on which he or she relies to establish the fact or circumstances of death. In item 4, the declarant must demonstrate personal knowledge of the facts contained in the declaration, unless he or she is relying on the documents identified in item 5 and attached to the declaration. If the declarant is relying on the documents, they will speak for themselves. There is no reason to also require the declarant to recite a hearsay narrative derived from the attached documents.

All forms used in probate proceedings are now mandatory forms under rule 201.1 of the California Rules of Court. The Health and Safety Code provisions authorize petitions that must be heard in the probate department or by a judge who regularly hears probate matters. The procedure contemplated by the statute is similar to existing probate proceedings. These factors have caused the advisory committee to prepare the proposed new forms as mandatory forms under rule 201.1.

However, there is a reason to consider making these forms optional, at least until statewide forms are developed to establish the birth and marriage records authorized by the statute. If these forms are made mandatory, local forms to establish a record of death could no longer be used, although local forms to establish records of a birth or a

marriage would be unaffected. Local multipurpose forms could be used to establish only two of the three records authorized by the statute and described in the forms.

The public's comments are solicited on whether these forms should be mandatory or optional.

Copies of proposed new forms MC-360 and MC-360A are attached at pages 4 and 5.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT NO. 6 03/28/03
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
IN THE MATTER OF:	
PETITION TO ESTABLISH RECORD OF DEATH	CASE NUMBER:

1. a. Petitioner (*name*): _____ is a beneficially interested person, entitled under section 103450 of the California Health and Safety Code to an order establishing the fact and the date and place of the death of the deceased person named in item 2.
- b. Petitioner's beneficial interest in this matter is ☐ stated in the space below ☐ stated in Attachment 1b.

2. **Deceased person:**

- a. Name: _____
- b. Date of death: _____
- c. Place of death: County of _____, State of _____

3. Check one of the following:

- a. ☐ There is no official record of the fact, date, and place of the death of the deceased person.
- b. ☐ A certified copy of the official record of the death of the deceased person cannot be obtained for the reasons ☐ stated in the space below ☐ stated in Attachment 3b.

4. The deceased person resided at time of death at (*street address and city*):

County of _____, State of _____

5. Petitioner requests that the court make an order determining that the death of the deceased person did in fact occur on the date and at the place stated in item 2 above, as shown by the form MC-360A, *Declaration in Support of Petition to Establish Record of Death* and attachments, filed herewith, and by other proofs adduced at the hearing.

6. Number of pages attached: _____

Date: _____

(TYPE OR PRINT NAME OF ATTORNEY FOR PETITIONER)

(SIGNATURE OF ATTORNEY)

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except as to those matters stated on information and belief, and as to those matters, I am informed and believe them to be true.

Date: _____

(TYPE OR PRINT NAME OF PETITIONER)

(SIGNATURE OF PETITIONER)

